

The section is as follows: "Every dealer in stocks, bonds or other securities shall pay for the privilege of transacting business an annual license tax of fifty dollars. No county, city or town shall levy or collect any tax under this section exceeding twenty-five dollars for the county and ten dollars for the city or town."

The courts have defined a dealer to be "one who buys and sells, who habitually engages in a course of dealing," and again, "not one who buys to keep or makes to sell, but buys to sell again."

State v. Barnes, 126 N. C., 1063.

State v. Cates, 129 N. C., 560.

Com. v. Casey, 33 Pa., 380.

There seems to be no contention that this trust company is not a dealer within the meaning of the statute, and as construed by the courts. But the trust company maintains that "dealing" in stocks and bonds is "a necessary and integral part of the trust company's business," and that it is, therefore, exempt from the license tax.

I am compelled to dissent from this view, and for two reasons.

1. "Dealing" in stocks and bonds is not a necessary and integral part of the business of a trust company. A trust company has been defined by the courts to be "any domestic corporation formed for the purpose of taking, accepting and executing such trusts as may be lawfully committed to it, and acting as trustee in the cases prescribed by law, and receiving deposits of money and other personal property, and issuing its obligations therefor, and of loaning money on real or personal securities."

Venner v. Farmer's Loan and Trust Co., 66 N. Y. Supp., 773.

And again, in *Jenkins v. Neff*, 163 N. Y., 320, the Court says: "A trust company accepts and executes all trusts of every description committed to it by any person or corporation, or any courts of record; accepts title to real or personal estate on trusts; acts as agent for corporations in reference to issuing, registering and transferring certificates of stock; accepts trusts for married women in respect to their separate property, and acts as guardian in respect to infants."

It is apparent that buying and selling stocks and bonds on its own account is not a necessary and integral part of the business of a trust company as outlined by the courts. If a trust company simply invests its trust funds in stocks and bonds which it holds for the benefit and protection of those whose funds are committed to its hands, then it would not be a dealer in stocks and bonds within the meaning of our statute. But when it buys and sells stocks and bonds on its own account, and for its own profit, it is not engaged in the technical business of a trust company.

2. But if the buying and selling of bonds should be deemed a necessary part of the business of a trust company, it does not follow that the trust company is, on that account, exempt from the license tax levied by the lawmaking power on all those who are engaged in such a business.

Undoubtedly the Wachovia Bank and Trust Company has a right to buy and sell stocks and bonds. This power is expressly conferred on it in its charter.

Private Laws 1891, chap. 90, sec. 5.